

ORDINANCE No. O2007-10-007

AN ORDINANCE ESTABLISHING PROCEDURES TO
CONTROL AND MINIMIZE STORMWATER
POLLUTION WITHIN THE CITY OF NOGALES

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF
NOGALES, ARIZONA:

Section One. Statement of purpose.

It is the purpose of this ordinance is to promote the public health, safety and general welfare by limiting the discharge of pollutants into the Nogales municipal separate storm sewer system ("MS4"). This system shall be used solely for the purpose of conveying stormwater only, and all necessary measures to prevent the introduction of pollutants into the MS4 shall be taken. This ordinance establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

Section Two. Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

ADEQ means the Arizona Department of Environmental Quality.

APPLICABLE WATER QUALITY STANDARD means a numeric or narrative water quality criterion that limits the quantity or concentrations of pollutants that may be present in navigable waters as such term is defined in Arizona Administrative Code, Title 18, Chapter 11, Ordinance 1, as amended.

AZPDES CONSTRUCTION GENERAL PERMIT (CGP) means AZPDES General Permit No. AZG2003- 001 for Stormwater Discharges from Large and Small Construction Activity in Arizona, except for those in Indian Country. This permit is administered by ADEQ.

BEST MANAGEMENT PRACTICES means the schedules of activities, prohibitions, and practices, general good housekeeping practices, pollution prevention practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to the public storm sewer system and ultimately into the waters of the United States. Best management practices also include treatment requirements, operating procedures and practices to control plant site runoff, spilling or leaks, sludge or waste disposal or drainage from raw material storage.

BUILDING PERMIT means an official document or certificate issued by the City of Nogales, which authorizes the performance of a specific construction work, grading or alteration of ground features to create certain improvements and structures.

CLEARING means any activity that removes the vegetative surface cover.

CONSTRUCTION means any activity, including clearing, grading or excavating, that results in land disturbance. However, it does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

CONSTRUCTION GENERAL PERMIT means a NPDES permit issued by the permitting authority that authorizes stormwater discharges from construction-related activities as defined in 40 CFR § 122.26.

CONSTRUCTION SITE means the area disturbed by the development and/or construction activity, and includes the areas where building materials are placed and access traversed by vehicles.

CONSTRUCTION WASTE means waste is generated from construction, demolition, renovation, and/or repair activities. Construction waste can include but is not limited to concrete truck washout, unused and leftover construction materials and litter.

DETENTION FACILITY means a detention basin or alternative structure designed for the purpose of temporary storage of stormwater runoff and gradual release of the stored water at controlled rates.

DRAINAGE WAY means any waterway that conveys surface water throughout or from the site.

EROSION AND SEDIMENT CONTROL refers to actions, measures or best management practices designed to minimize the accelerated erosion and suspension of sediment by water or wind.

GRADING means excavation of or fill placement of material upon a land surface to create a desired slope or elevation.

IMPERVIOUS means surfaces such as building rooftops, pavements, sidewalks, driveways, etc. that cannot effectively infiltrate rainfall.

LAND DISTURBANCE means any activity, that changes the volume or peak flow discharge rate of stormwater runoff from the land surface, including, but not limited to: (i) the grading, digging, cutting, scraping, or excavating of soil; (ii) placement of fill materials; (iii) paving; (iv) construction; (v) substantial removal of vegetation; or (vi) any activity which bares soil or rock.

MAJOR STORM means any storm that drops 0.50 inch or more of rainfall.

MUNICIPAL SEPARATE STORM SEWER SYSTEM or **MS4** means a publicly-owned conveyance or system of conveyances that: (i) discharges to waters of the United States and is designed or used for collecting or conveying stormwater; (ii) is not a combined sewer; and (iii) is not part of a publicly-owned treatment facility.

NAVIGABLE WATERS means such waters as defined in 33 United States Code Section 1362(7), as amended.

NONRESIDENTIAL USE means any real property that is actually or intended to be used for commercial, industrial, agricultural, or recreational purposes; the immediate vicinity of five (5) or more connected residential dwelling units; and residential subdivisions or dwellings that have not yet been issued a certificate of occupancy.

NOTICE OF INTENT or **NOI** means an application (form) that is submitted to the permitting authority to notify of the intent to be covered by the ruling/active construction general permit, and trigger the review and permit-waiting time associated with the permit. The NOI serves as a legally binding promise to comply with construction general permit conditions.

NPDES means the National Pollutant Discharge Elimination System.

NPDES COORDINATOR means the City Manager or his designee who is authorized by this ordinance or other state authorized program (i.e. Arizona Pollutant Discharge Elimination System ("AZPDES")) to administer its provisions.

NPDES PERMIT means an authorization to discharge pollutants issued pursuant to 33 United States Code Section 1342 or other state authorized program.

PERMITTING AUTHORITY means the NPDES-authorized state agency or EPA regional office that administers the NPDES stormwater program. Permitting authorities issue permits, provide compliance assistance, and inspect and enforce the program.

PERMITTEE means an entity or its successors, agents, employees, or assigns that has applied for and received a permit, authorization, license, or permission from the City to conduct land-disturbance activities.

PERIMETER CONTROL OR SEDIMENT CONTROL means a physical barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

PERVIOUS means a porous surface that does not prevent the entry of water into the soil and decreases stormwater runoff.

PHASING means construction on a parcel of land in a distinct sequence of areas, with the stabilization of each area completed before construction of the next.

POLLUTANT means solid, liquid, gaseous or other substances that can alter the chemical or physical properties of water, including but not limited to: fluids, solid wastes, pesticides, herbicides, fertilizers, solvents, sludge, petroleum and petroleum products, biological materials, radioactive materials, animal wastes, acids and bases, floatables and noxious or offensive matter of any kind.

POLLUTION means the presence of pollutants on land or in stormwater.

POST-CONSTRUCTION SITE means a site at which land-disturbance activities related to construction have been completed.

POST-CONSTRUCTION STORMWATER CONTROL MEASURES means those measures, either structural or non-structural, that are implemented and maintained to manage stormwater runoff after construction has been completed.

PUBLIC STORM DRAIN SYSTEM means all or any part of the publicly-owned storm drains, basins, curbs, culverts, ditches, washes, joint-use drainage facilities, pipes, graded areas, and gutters located within easements, rights-of-way, parks, streets, roads or highways, or in common areas of real property owned by the City, that are used for collecting, retaining, detaining, or conveying stormwater.

RELEASE means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, placing, leaching, dumping, or disposing into or on any land in a manner that significant materials, pollutants, or stormwater may come to be located in the public storm drain system.

SANITARY WASTE means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned.

SEDIMENT means soil particles, both mineral and organic, that are in suspension, are being transported, or have been removed from its site of origin by air, water, and gravity and have come to rest on the earth's surface.

SEDIMENT BASINS AND SEDIMENT TRAPS means temporary (or permanent) ponding areas formed by constructing an earthen embankment with a stone outlet used to detain and collect sediment and to prevent damaging erosion on site, which may cause silt-laden runoff from the site. Basins are generally larger in size than traps and serve ten acres or more of a disturbed area at one time.

SIGNIFICANT MATERIALS means any solid, liquid, or gaseous substance other than stormwater, that can release pollutants, including but not limited to: raw materials; fuels; solvents; detergents; finished materials; hazardous substances designated under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 United States Code Section 9601(14); any chemical for which a report must be filed pursuant to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986, 42 United States Code Section 11023; fertilizers; pesticides; herbicides; and waste materials, including garbage, trash, ashes, slag, yard waste, animal waste, and sludge.

SITE means a parcel of land or a contiguous combination thereof, where construction work is performed as a single, unified or phased operation.

STABILIZATION means an erosion control technique, practice or procedure used to prevent or minimize exposed soil from eroding. Stabilization practices include but are not limited to: Pre-watering, applying dust-suppressant, vegetation (temporary and permanent seeding), gravel application, mulching, soil stabilizers, plastic covers and tarps.

START OF CONSTRUCTION. The first land-disturbing activity associated with a development, including but not limited to land operation such as clearing, grubbing, grading, and filling; installation of streets and walkways; excavation for footings, piers and foundations; erection of temporary forms; and installation of accessory buildings, such as garages.

STORMWATER means rain water runoff, snow melt runoff and surface runoff and drainage.

STORMWATER POLLUTION PREVENTION PLAN or SWPPP means a plan to describe a process through which an entity planning land-disturbance activities thoroughly evaluates potential pollutant sources at a site and selects and implements appropriate best management practices or measures designed to prevent or control the discharge of pollutants in stormwater runoff from migrating off-site.

TOTAL SUSPENDED SOLIDS or TSS means a measure of the suspended solids in a water column.

WATERS OF THE UNITED STATES means all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters subject to the ebb and flow of the tide. Waters of the United States include all interstate waters and intrastate lakes, rivers, streams (including intermittent streams), mudflats, sand flats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds.

NOGALES WASH IS WATER
OF THE UNITED STATES
AND DEEMED "IMPAIRED" BY
THE ADEQ.

Section Three. General Powers.

(a) The NPDES Coordinator may regulate the use, grading, paving, maintenance and operation of public rights-of-way and the public storm drain system so as to reduce, to the maximum extent practicable, the addition of pollutants to stormwater in quantities or concentrations that could reasonably be expected to cause or contribute to either a violation of an applicable water quality standard or any condition of a stormwater NPDES permit issued to the City; or any other act that causes or contributes to damage to the public storm drain system. The NPDES Coordinator may regulate the use of the public storm drain system through administrative rules, permits, or other written forms of approval for activities that could release pollutants or stormwater to the public storm drain system.

(b) Nothing in this ordinance shall be construed as an assumption by the City of any other person's duties or responsibilities arising under any applicable law, including the common law. Except where required to comply with applicable law, any activities of the NPDES Coordinator authorized by this ordinance are permissive rather than mandatory.

(c) The NPDES Coordinator will provide implementation guidance to assist the public in complying with this ordinance. This guidance may consist of fact sheets, policy and procedure manuals and other pertinent information relating to the development and implementation of best management practices.

Section Four. Declaration of nuisance.

(a) It is hereby declared to be a public nuisance for any person to directly or indirectly release significant materials, pollutants, or stormwater without proper authorization in quantities, velocities or concentrations that cause or contribute to, or may reasonably be expected to cause or contribute to: (i) damage to a publicly-owned right-of-way or the public storm drain system; (ii) a violation of an applicable water quality standard; or (iii) a violation of any condition of a stormwater NPDES permit issued to the City.

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(b) As used in this section, proper authorization exists if an activity affecting stormwater is specifically authorized either by (i) this ordinance; (ii) an administrative rule, permit, plan approval, or other authorization issued in compliance with this ordinance, or (iii) a stormwater NPDES permit.

Section Five. Requirement for new development projects to submit stormwater pollution prevention plans; construction permit issuance; fees.

(a) Any entity applying for a permit, authorization, license, or permission for construction activity that will disturb one (1) or more acres of land shall prepare a stormwater pollution prevention plan (SWPPP) for the management of stormwater discharges from the proposed construction site. The applicant shall refer to Volume III: Erosion Control (2004 draft, three copies of which are on file with the City Clerk, and any subsequent revisions) of the Maricopa County Flood Control District Drainage Design Manual for guidance in developing the SWPPP. The SWPPP must indicate the addresses and tax parcel numbers of all affected properties. In addition to what is required by the construction general permit to be included in the SWPPP, the SWPPP shall include, at a minimum:

- (1) The total area of the site, an estimate of the total area of the site expected to be disturbed and a description of the intended sequence of activities that will disturb soils at the construction site.
- (2) A legible site map, showing the entire site that identifies:
 - (i) Directions of stormwater runoff and the type and location of the measures intended to manage the runoff, as applicable.
 - (ii) Areas of soil disturbance.
 - (iii) Construction material, waste, borrow, or equipment storage areas.
 - (iv) Locations where stormwater discharges to the MS4 and/or navigable waters could occur.
 - (v) Current and proposed locations of on-site drywells.
- (3) A description of both structural and non-structural best management practices to be implemented and maintained at the construction site. Any post-construction stormwater management measure to be installed or completed during the construction period shall be designed and installed consistent with the City's general engineering requirements, and meet all applicable authorization and management requirements under state and federal law.
- (4) A description of final construction site stabilization to be performed, including stabilization of slopes, vegetation, ground cover and permanent drainage features.
- (5) The plans for the management of construction waste and sanitary waste.
- (6) Detailed plans for the use, storage, handling, and disposal of hazardous substances as defined in Arizona Revised Statutes § 49-201, as amended.
- (7) Detailed plans for the maintenance of stockpiled materials and measures to prevent the erosion and transport of stockpiles by stormwater.
- (8) The statement and signature by a qualified individual certifying the accuracy and completeness of the SWPPP. A qualified individual includes any of the following:
 - (i) Certified professional in erosion and sedimentation control (CPESC).
 - (ii) Certified professional in storm water quality (CPSWQ).
 - (iii) Registered professional engineer (civil, agricultural, or environmental) in the State of Arizona with a minimum of five (5) years of design and/or management experience in stormwater permitting/compliance work.
- (b) The applicant shall provide an accurate and complete SWPPP to the NPDES Coordinator for review before a construction permit is issued by the City. In cases where an application is submitted for a grading permit only, such permit shall not be issued until the NPDES Coordinator has reviewed and approved the best management practices and the permit shall be made conditional upon compliance with the best management practices. If the NPDES Coordinator determines that the SWPPP is inadequate to prevent sediment from reaching waters of the United States, adjacent property, the MS4 or the public right-of-way, the NPDES Coordinator may authorize and require additional best management practices or and/or configurations thereof.
- (c) Along with the SWPPP, the applicant shall submit to the NPDES Coordinator a copy of an accurate and complete (including signature) NOI submitted to the permitting authority to seek coverage under the construction general permit, or in lieu of this, a copy of the letter or confirmation document from the permitting authority regarding authorization status.

(d) Fees for SWPPP review and for review and approval of best management practices for grading permits shall be established by the City Council as part of the annual budget process or as otherwise adopted by City Council resolution.

Section Six. Requirement to install and maintain erosion and sediment measures pursuant to an approved SWPPP; documentation.

All land-disturbing activities at the construction site shall be completed in accordance with the SWPPP. The permittee shall implement all best management practices as described in the SWPPP and shall periodically inspect them to ensure that they are operating correctly and have not been damaged and/or altered. The permittee shall conduct periodic inspections and maintain an inspection log or report in accordance with the construction general permit by the permitting authority.

Section Seven. Requirement to properly control and dispose of construction and sanitary waste; prohibited practices; federal, state, and county permits.

Construction and sanitary wastes are considered significant stormwater pollutants, and their proper management and impact minimization is important. Therefore, the permittee shall:

- (a) Properly control and dispose of both construction debris/waste and sanitary waste in accordance with the SWPPP.
- (b) Not willfully release or cause to be released pollutants to stormwater runoff or stormwater infrastructure.
- (c) Apply for and obtain all federal, state, county, and local permits required for construction sites, including disposal of construction and sanitary waste.

Section Eight. Requirements related to operation and management of all existing and new post-construction stormwater structures.

- (a) Owners and/or operators of stormwater structures or facilities located on private property shall be fully responsible to properly operate and maintain these facilities per design specifications. Examples of such facilities include detention basins, retention basins, drywells, channels, culverts, and drainage pipes.
- (b) If a permanent drainage facility is not properly operated or maintained, the City may warn the owner/operator of the deficiency in writing. In the event that an improperly operated or maintained drainage facility results in a hazardous condition to the City or in a potential violation of the City's Phase II MS4 Permit, the City may act unilaterally to address and/or correct the situation. Any costs incurred by the City to address or correct an improperly operated or maintained private/communal drainage facility shall be borne by the owner/operator.
- (c) The NPDES Coordinator shall have the right to enter and inspect private/communal drainage facilities in accordance with the provisions of Section Nine of this ordinance.

Section Nine. Inspections.

- (a) The NPDES Coordinator shall enforce the provisions of this ordinance. The NPDES Coordinator is authorized to make inspections (i) in the normal course of job duties; (ii) in response to a complaint that an alleged violation of the provisions of this ordinance may exist; or (iii) when there is reason to believe that a violation of this ordinance has

been or is being committed. The NPDES Coordinator may collect and analyze samples of stormwater and significant materials, install and require the installation of stormwater sampling and measurement devices, and examine records concerning significant materials and stormwater.

(b) The NPDES Coordinator may enter onto any real property, or into any building or premises, at all reasonable times to determine compliance with this ordinance or a stormwater NPDES permit issued to the City, or to otherwise permit the duties imposed by this ordinance, provided that if such property, building, or premises is occupied, the NPDES Coordinator shall present credentials to the occupant and request entry. If such property, building, or premises is unoccupied, the NPDES Coordinator shall first make a reasonable effort to locate the owner or other person having charge of control of the building or premises and request entry. If entry is refused, the NPDES Coordinator has recourse to every remedy provided by law to secure entry, including the acquiring of an administrative warrant from the City Court.

(c) When the NPDES Coordinator has first obtained a proper inspection warrant, administrative warrant, or other remedy provided by law to secure entry, no owner, occupant, or person having charge, care, or control of any real property, structure, or building shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the administrative authority for the purpose of inspection pursuant to this ordinance.

(d) It shall be a criminal violation to interfere with, prevent, or attempt to interfere with or prevent an individual employed by the City or other person contracted for by the City, from investigating an alleged violation of this ordinance, or from correcting or abating a violation of this ordinance.

(e) It shall be a criminal violation to knowingly make a false or fraudulent statement, or knowingly misrepresent a fact, or mislead an individual employed by the City or other person contracted for by the City, when that individual is investigating a violation or alleged violation of this ordinance, or is correcting or abating a violation of this ordinance.

(f) Inspections conducted pursuant to this ordinance may be expanded to include items covered by other chapters of the Development Code that relate to the quality or management of stormwater.

Section Ten. Violations.

(a) It shall be unlawful, punishable by civil or criminal sanctions as set forth below, for any person to cause, facilitate, aid or abet any violation of, or to fail to perform any act or duty required by, any provision of this ordinance, or any rules or regulations promulgated hereunder.

(b) When two (2) or more persons have liability to the City or are responsible for a violation of this ordinance, their responsibility shall be joint and several.

(c) It shall be a civil (non-criminal) violation, punishable as set forth below, for a person to:

(1) Use, handle, store, treat, spill, dump, or dispose of stormwater, pollutants or significant materials in a manner that creates a public nuisance as defined in Section Four.

(2) Release to a publicly-owned right-of-way or public storm drain system any substance that is not composed entirely of stormwater except (i) releases pursuant to a NPDES permit; (ii) releases resulting from fire fighting or street maintenance activities; or (iii) releases of materials as provided in subsections (e) and (f) of this section.

(3) Violate the terms and conditions of a permit or approval granted pursuant to subsection (e) below, or the provisions of a SWPPP including, without limitation, best management practices, submitted to the City in accordance with Section Five of this ordinance.

(d) It shall be a criminal violation, punishable as set forth below, for a person to:

(1) Use, handle, store, spill, dump or dispose of significant materials in a manner that could reasonably be expected to cause or contribute to the addition of pollutants to the public storm drain system.

(2) Without good cause, interfere with or prohibit any City employee from conducting any activities in furtherance of the requirements of this ordinance, including conducting inspections and taking samples.

(e) This section does not prohibit releases of stormwater from stormwater retention or detention basins or a de minimis point of discharge if a permit or approval is first obtained from the NPDES Coordinator or his designee. A person seeking such a permit or approval shall demonstrate that the release is not reasonably expected to cause or contribute to a public nuisance as defined in Section Four of this ordinance.

(f) This section does not prohibit releases from: fire hydrant flushing; potable water systems, including water line flushing; foundation or footing drains that are not contaminated by pollutants; naturally occurring seeps, springs, wetlands or riparian areas; irrigation water; diverted stream flows; rising ground waters; uncontaminated ground water infiltration to separate storm sewer; uncontaminated pumped ground water; vehicle washing for no charge in residential areas, or for not-for-profit sporadic fundraisers; residential evaporative coolers; air conditioner condensate; dechlorinated swimming pool discharges; dust control watering; or any other water source not containing pollutants.

Section Eleven. Civil (non-criminal) penalties.

(a) Any person that commits a civil violation as set forth in Section Ten above, shall be subject to a civil (non-criminal) action in any court of competent jurisdiction to collect a civil penalty for a sum not to exceed two thousand five hundred dollars (\$2,500.00) for each violation. In seeking the assessment of a civil penalty, the following criteria shall be considered:

- (1) The seriousness of the violation;
- (2) The economic benefit, if any, resulting from the violation;
- (3) Any history of such violations;
- (4) Any good-faith efforts to comply with the applicable requirements;
- (5) The economic impact of the penalty on the violator; and
- (6) Such other factors as justice may require.

(b) In addition to the civil penalty imposed herein, the person shall be liable for any penalties imposed on the City as a result of the violation.

(c) The City Manager or designee shall provide written notice and an opportunity to be heard to any person assessed a civil penalty under this ordinance. Within fifteen (15) days of receipt of the notice, such person shall pay the penalty or file a written request for

a hearing with the City Manager's office or designee. If a hearing is held, the City Manager or designee shall issue a written decision, and such decision shall be final.

Section Twelve. Criminal penalties.

A person who commits a criminal violation as set forth in Section Ten above shall be subject to a criminal action in any court of competent jurisdiction and, if found guilty thereof, shall be guilty of a class 2 misdemeanor.

Section Thirteen. Enforcement of judgments.

Any judgment for abatement, restitution or civil (non-criminal) penalties taken pursuant to this ordinance may be enforced as any other civil judgment.

Section Fourteen. Violations not exclusive.

Violations of this ordinance are in addition to any other violation enumerated within the City Code and in no way limit the penalties, actions or abatement procedures which may be taken by the City for any violation of this ordinance which is also a violation of any other provision of this Code or any other applicable law. The remedies specified herein are cumulative and the NPDES Coordinator, or the City Attorney, may proceed under these or any other remedies authorized by law.

Section Fifteen. Each day a separate violation.

Each day any violation of any provision of this ordinance or the failure to perform any act or duty required by this ordinance continues shall constitute a separate offense.

Section Sixteen. Service of notices.

- (a) Any notice required to be given for any purposes under this ordinance shall be by either having the NPDES Coordinator hand-deliver the notice, or by mailing the notice by certified mail, return receipt requested.
- (b) Notice is deemed effective on the date it is hand-delivered or deposited in the United States Mail, certified mail, return receipt requested.
- (c) Nothing herein shall preclude the City from giving additional oral or written notice at its discretion. If the City does elect to give any additional notice in any instance, it shall not thereby become obligated to give such additional notice thereafter in the same or other situation.

Section Seventeen. Restitution.

In addition to any civil or criminal penalty provided for in this ordinance, any person violating this ordinance shall be liable for all costs which may be associated with the City's remediation of any violation of this ordinance. The court shall impose restitution in addition to any administrative, civil or criminal penalties.

Section Eighteen. Abatement in lieu of or in addition to other actions.

- (a) In addition to or in lieu of denial of access or filing a civil or criminal complaint, the City may file notice to abate any violation of this ordinance. Such abatement shall proceed independently of any civil or criminal violation filed pursuant to this ordinance.

(b) If any person served a notice to abate by the City pursuant to this ordinance fails to comply with such notice or order, the City may correct or abate the conditions subject to the notice.

(c) The NPDES Coordinator shall prepare a verified statement as to the actual cost of correcting or abating the violation, and shall add an additional five (5) percent for costs of inspection and other incidental costs associated with abating the violation. The statement shall be delivered or mailed, certified mail, return-receipt requested, to the owner(s) or other person(s) the notice to abate or order was served upon. The statement shall further set forth the following:

(1) The person has fifteen (15) calendar days from the date of delivery or mailing of the statement to pay.

(2) Appeal procedures.

Section Nineteen. Notice to abate.

(a) If, after an inspection, the City finds one (1) or more violations of this ordinance, and the City elects to use the abatement process, the City shall, in writing, notify the owner, or agent for the owner.

(b) The notice to abate shall set forth the following information:

(1) The owner has fifteen (15) calendar days from the mailing of the notice to abate to correct the violation.

(2) Identification of the property in violation by street address if known, and if unknown, then by book, map and parcel number.

(3) Statement of the violation in sufficient detail to allow a reasonable person to identify and correct the violation(s).

(4) Re-inspection date and time.

(5) Name, address and phone number of the City inspector who sent the notice to abate.

(6) A warning stating that if the violations are not corrected within the fifteen (15) calendar day period the City can abate the problem and assess the owner the cost of such abatement and record a lien on the property for the assessment.

(7) Appeal procedures.

(8) The fifteen (15) calendar day notice set forth in this section shall not apply to emergency abatements pursuant to section

Section Twenty. Appeal of notice to abate.

(a) Any notice to abate or assessment can be appealed to the City Manager or designee.

(b) An appeal must be filed within fifteen (15) calendar days of the service of the notice to abate or assessment and must be filed with the office of the City Manager or designee by submitting a copy of the appeal to the City Clerk.

(c) Failure of a person entitled to appeal under this ordinance to timely file an appeal shall constitute a waiver of the right to a hearing of the complaint before the City Manager or designee and such person shall be stopped to deny the validity of any notice or assessment which could have been timely appealed.

(d) The notice of appeal shall set forth, in writing, the person's reasons for believing no violation of the ordinance has occurred or that the assessment is excessive.

(e) The individual appealing shall accompany the written appeal with an appeal fee of one hundred dollars (\$100.00), such sum to be deposited in the general fund of the City.

(f) In case of financial hardship, the fee may be suspended until the decision on appeal is rendered. The City Manager or designee may also waive the fee upon a finding of financial hardship.

Section Twenty-One. Procedure on appeal.

(a) The City Manager or designee shall set a hearing date for review of the appeal within forty (40) calendar days of the receipt of notice of appeal.

(b) The City Manager or designee shall take testimony from all parties to the appeal. The parties may, if they choose, be represented by an attorney. The hearing shall be informal and the rules of evidence shall not apply.

(c) The City Manager or designee shall prepare a written summary of the hearing and shall set forth the decision reached. A decision shall be rendered within fifteen (15) calendar days of the hearing and the findings and decision shall be mailed to all parties to the appeal.

Section Twenty-Two. Abatement variances and time extensions.

(a) Any person may request a variance or time extension of a notice to abate or assessment. Such request shall be made to the City Manager or designee.

(b) The same time limits for filing and written submittal set forth in Section Twenty applies to this section.

(c) The procedure shall be the same as set forth in Section Twenty-One.

(d) The City Manager or designee may grant a variance only where it is determined that all of the following apply:

(1) Special circumstances or conditions apply to this appeal application such as hardship which is not self imposed;

(2) Authorization of the variance is necessary for the preservation and enjoyment of substantial property rights; and

(3) Authorization of the variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general.

(e) If a variance is granted by the City Manager or designee, the condition in subsection (d) allowing the variance and the extent of the variance shall be set forth in a written finding.

(f) The City Manager or designee may grant one (1) extension of the time limit set forth in Section Nineteen. Such extension shall not exceed one hundred eighty (180) calendar days. The extension period granted by the City Manager or designee starts to run on the day the City Manager or designee issues a decision pursuant to Section Twenty-One subsection (c). The City Manager or designee may grant an extension only where it is shown that:

(1) It would create a hardship to comply with the notice to abate within the fifteen-day period of Section Nineteen; and

(2) The moving party presents a plan that is approved by the City Manager or designee, by which said party will comply with the decision within no more than one hundred eighty (180) calendar days.

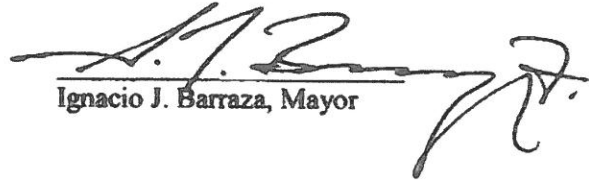
Section Twenty-Three. Stay of order during appeal.

Except for violations requiring an emergency abatement, the timely filing of an appeal shall stay enforcement of a notice to abate or assessment until the appeal is final determined by the City Manager or designee.

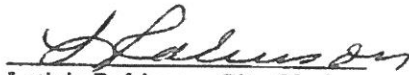
Section Twenty-Four. Emergency abatement.

If a situation presents an imminent danger or threat to the health, safety or welfare of any person or the public in general, the City may issue a notice to abate directing the responsible person to take such action as is appropriate to correct or abate the emergency. In addition, the City may act to correct or abate the emergency. In the event the City is unable to contact the responsible person, such inability in no way affects the City's right to correct or abate the emergency. The responsible person shall be granted a review before the City Manager or designee on the matter upon that person's request, as soon as practicable, but such appeal shall in no case stay the abatement or correction of such emergency.

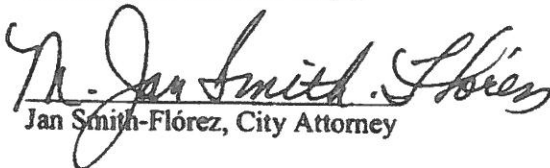
PASSED AND ADOPTED by the Mayor and Council of the City of Nogales, Arizona, this 7th day of NOVEMBER, 2007.


Ignacio J. Barraza, Mayor

ATTEST:


Leticia Robinson, City Clerk

APPROVED AS TO FORM:


Jan Smith-Flórez, City Attorney

STAFF SUMMARY

SUBJECT:

First Reading of the City ordinance regulating storm water discharges to minimize pollutants reaching waters of the United States via the City's public storm drains.

BACKGROUND:

The City of Nogales operates a regulated small "MS4" (municipal separate storm sewer system) that falls within Phase II of the federal regulations enacted by the EPA under authority of the Clean Water Act. As such, it must be permitted and fully implement its Storm Water Management Plan ("SWMP") by the time that ADEQ's initial general MS4 permit expires, which is this December 19. Part of the SWMP is to adopt an ordinance that will allow the City to review and regulate any construction activity that disturbs 1 acre or more of land for the purpose of minimizing erosion and sediment run-off that could enter the MS4, as well as regulating post-construction run-off and detecting illicit discharges into the MS4.

The attached ordinance is taken from the ordinance adopted in 2005 by the City of Avondale, which like Nogales is also a small MS4 falling within the regulations of Phase II. In addition, the ordinances recently adopted by Yuma and Apache Junction were reviewed, as well as the model ordinance posted on the EPA website, and modifications based on these ordinances were incorporated into the attached draft Nogales ordinance.

It is the opinion of the City Attorney's Office that the attached ordinance meets the minimum requirements of the Phase II regulations.

STAFF RECOMMENDATION:

Staff recommends that the attached ordinance be adopted to comply with the City's obligations under its Storm Water Management Plan.

SUGGESTED MOTION:

"I move to approve First Reading of Ordinance No. O2007-10-007"

10-3-07

STAFF SUMMARY

SUBJECT:

Second Reading of the City ordinance regulating storm water discharges to minimize pollutants reaching waters of the United States via the City's public storm drains.

BACKGROUND:

The City of Nogales operates a regulated small "MS4" (municipal separate storm sewer system) that falls within Phase II of the federal regulations enacted by the EPA under authority of the Clean Water Act. As such, it must be permitted and fully implement its Storm Water Management Plan ("SWMP") by the time that ADEQ's initial general MS4 permit expires, which is this December 19. Part of the SWMP is to adopt an ordinance that will allow the City to review and regulate any construction activity that disturbs 1 acre or more of land for the purpose of minimizing erosion and sediment run-off that could enter the MS4, as well as regulating post-construction run-off and detecting illicit discharges into the MS4.

The attached ordinance is taken from the ordinance adopted in 2005 by the City of Avondale, which like Nogales is also a small MS4 falling within the regulations of Phase II. In addition, the ordinances recently adopted by Yuma and Apache Junction were reviewed, as well as the model ordinance posted on the EPA website, and modifications based on these ordinances were incorporated into the attached draft Nogales ordinance.

It is the opinion of the City Attorney's Office that the attached ordinance meets the minimum requirements of the Phase II regulations.

STAFF RECOMMENDATION:

Staff recommends that the attached ordinance be adopted to comply with the City's obligations under its Storm Water Management Plan.

SUGGESTED MOTION:

"I move to approve Second Reading of Ordinance No. O2007-10-007"